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IN THE

Supreme Court of the United States

MARCH TERM, 1974

No. 73-1299

PASCOE STEEL CORPORATION,
a Georgia Corporation,
Petitioner,

vs.

WIEMAN-SLECHTA CO.,
a Nebraska Corporation,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

MEMORANDUM IN OPPOSITION

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MEMORANDUM IN OPPOSITION

—o—

Petitioner contends that the decision of the United States District Court in North Dakota violates Rule 52 of the Federal Rules of Civil Procedure in that it fails to find facts specially and to state its conclusions of law with respect thereto. Petitioner contends that this failure also amounts to a denial of due process in violation of the Fifth Amendment to the United States Constitution.

Petitioner further contends that the decision of the United States District Court, as affirmed by the Court of Appeals for the Eighth Circuit, is contrary to statutory and case law in North Dakota with respect to the so-called parol evidence rule and the law governing formation of contracts.

—o—

STATEMENT OF CASE

This case was filed by Wieman-Slechta Co., a Nebraska Corporation ("Wieman"), against Pascoe Steel Corporation, a Georgia Corporation ("Pascoe"), in the United States District Court for the District of North Dakota.

The Complaint alleged that Pascoe promised the delivery of certain components to a building construction site by a certain specified date and that Wieman, in reliance of this promise, entered into a contract with a third party, Morrison-Knudsen Company & Associates ("Morrison-Knudsen"), for the construction of these steel buildings with a designated completion date. Pascoe failed to deliver the components in accordance with its promised delivery dates and Wieman suffered substantial damage. The Complaint requested the recovery of damages in the amount of Seventy-Three Thousand Four Hundred Forty-Nine Dollars and Seventy-One Cents ($73,449.71).

The case was tried to the District Court in Grand Forks, North Dakota, and resulted in a judgment in favor of Wieman in the amount of Fifty-Five Thousand Four Hundred Forty-Nine Dollars and Seventy-One Cents ($55,449.71). The decision of the District Court was rendered by Memorandum Opinion of eleven typewritten pages.

Petitioner filed a motion for amended findings for a new trial which was denied by the District Court.

Petitioner appealed to the Court of Appeals for the Eighth Circuit. That Court affirmed the decision of the District Court. A Petition for Rehearing En Banc was denied without opinion by the Court of Appeals.

STATEMENT OF FACTS

The facts of this case involve, generally, agreements concerning the construction of a number of steel warehouse buildings for use by Morrison-Knudsen at a construction site in North Dakota. Pascoe was interested in providing the component parts for these steel buildings and invited Wieman to work with Pascoe in making a presentation to Morrison-Knudsen.

The two principals of Wieman met the sales manager of Pascoe in Grand Forks, North Dakota, where several meetings were held with representatives of Morrison-Knudsen. The various details of the project were discussed, including a proposed completion date, which was to be June 15, 1970. After some involved discussions, the parties agreed that Pascoe would supply the steel buildings and Wieman would construct the buildings on the site. Pascoe and Wieman had separate contracts with Morrison-Knudsen for the purpose of accomplishing the complete project.

Throughout the discussions, Pascoe's representative repeatedly promised the Wieman representatives that the steel buildings would be delivered to the construction site during the first week of April, 1970. Wieman representatives told the Pascoe representative that Wieman would not enter into the agreement with Morrison-Knudsen without Pascoe's promise to make timely delivery in this manner. Understanding that Wieman was relying on this promise and being fully aware of the damages that could accrue to Wieman in the absence of a timely delivery, Pascoe's representative promised the Wieman representa-

tives that the steel building component parts would be delivered during the first week of April, 1970.

Relying on this promise, Wieman proceeded to enter into a contractual arrangement with Morrison-Knudsen. Pascoe also agreed with Morrison-Knudsen to supply the component steel parts. Because of the number of purchase orders, letters, telephone conversations and other communications which passed between Pascoe and Morrison-Knudsen, it is impossible to determine exactly what writing, if any, constituted the agreement between Pascoe and Morrison-Knudsen.

In spite of the importance placed by all parties on timely delivery, the steel buildings were delivered over a month later than they had been promised, out of the order in which they were to be delivered and in a very staggered fashion. This caused substantial problems and resultant damages for Wieman. Substantial evidence was introduced at the trial to show the extent, amount and nature of the damages to Wieman.

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DISCUSSION OF ISSUES

I.

The District Court's Memorandum Opinion meets the requirements of Rule 52 of the Federal Rules of Civil Procedure and does not violate the Due Process Provisions of the Fifth Amendment to the United States Constitution.

Pascoe has contended that the memorandum opinion filed by the District Court fails to meet the requirements

of Rule 52 (a) of the Federal Rules of Civil Procedure. Wieman believes that the requirements have been met and that the District Court has set forth a complete statement of facts which fully justify the conclusions of law made by the District Court.

The memorandum opinion surpasses the minimal requirements which are stated in *United States v. F. D. Rich Co., Inc.*, 439 F. 2d 895 (8th Cir. 1971), at pages 898-899:

> "Appellant Rich asserts that the trial court failed to make the necessary findings to permit an adequate appellate review. Appellant specifically charges the findings relating to Vaught's alleged delay in performance were inadequate to sustain the trial court's conclusions of law. The trial judge made no separate findings, but instead incorporated them into his unreported memorandum opinion. Although the opinion does not elaborate or detail each subsidiary issue raised by the defendant Rich in its claim for delay damages, the trial court clearly indicated the evidentiary basis for its decision on this issue. It recited, as an ultimate finding:
>
> > 'the defendant has wholly failed to sustain the burden of proof on the affirmative defense of damage to the defendant by unreasonable delay.'
>
> Although more extensive findings are certainly helpful in a case as complex as this, the district court's memorandum opinion sufficiently outlines the basis and underlying grounds for its decision, which is all that is required. Christensen v. Great Plains Gas Company, 418 F. 2d 995, 1000 (8th Cir. 1969); Freeman v. Gould Special School District, 405 F. 2d 1153, 1156 (8th Cir.), cert. denied, 396 U. S. 843, 90 S. Ct. 61, 24 L. Ed. 2d 93 (1969); Manning v. Jones, 349 F. 2d 992, 996 (8th Cir. 1965). See also, Glassman

> Construction Company v. United States for Use and Benefit of Clark-Fontana Paint Co., 421 F. 2d 212 (4th Cir. 1970) (Miller Act case); Seligson v. Roth, 402 F. 2d 883 (9th Cir. 1968). Appellant Rich, who presented the trial court with 156 proposed findings, misconstrues the requirements of Rule 52 (a), Fed. R. Civ. P. *The trial court need not make specific findings on all facts necessary to reach a decision in the case.* Skelly Oil Co. v. Holloway, 171 F. 2d 670, 673, (8th Cir. 1948). See generally, 5 Moore, Federal Practice ¶ 52.05[1] (2d ed. 1969)."

It is further stated in *Freeman v. Gould Special School District of Lincoln, County, Arkansas,* 405 F. 2d 1153 (8th Cir. 1969), at page 1156, that:

> "While the findings might be more detailed, we believe Judge Harris' findings comply with Rule 52 (a), Fed. R. Civ. P. As articulated by Judge Mehaffy in Manning v. Jones, 349 F. 2d 992, 996 (8th Cir. 1965):
>
> "'* * * [A] district court's findings of fact must be liberally construed and found to be in consonance with the judgment if the judgment has support in the record evidence. * * * This is so even if the findings are not as specific or detailed as might be desired.'"

The defendant Pascoe has placed considerable stress on the parol evidence rule. The district court has made detailed findings of fact which make it abundantly clear as to what evidence was considered by the district court. Parol evidence was obviously considered and it is inherent in the memorandum opinion that the issue of the application of the parol evidence rule has been resolved against the defendant Pascoe.

Pascoe is also concerned about the question of proof required by the laws of North Dakota. It is most clear

from the memorandum opinion that the district court has found that a promise was made to Wieman that was binding upon the defendant Pascoe. As stated above, if the judgment has support in the record evidence, the district court's findings of fact must be liberally construed and found to be in consonance with the judgment. It is clear that the district court found that the quantum of proof was sufficient to support the finding that the promise was made—that is inherent in the finding itself.

Respondent Wieman simply submits that it is not necessary that the district court make a citation to a case or to a statute in support of each and every finding of fact or conclusion of law made. The basis for the decision of the district court is clear.

The issues presented in this case were fairly tried before the district court and a full and complete memorandum opinion was rendered by the district court. The issues were clear and the basis upon which the district court made its decision is equally clear. Due process of the law throughout these proceedings has certainly been granted to Pascoe. Pascoe appears to complain mainly because it is unhappy with the decision rendered and not because of any violation of due process or of any other constitutional right.

II.

The Memorandum Opinion of the District Court complies with the statutory and case law of the State of North Dakota.

Pascoe has placed great emphasis on the parol evidence rule which is embodied in the statutes of North

Dakota. Wieman presented numerous arguments to the District Court as to why the parol evidence rule should not be applied in the instant case. Pascoe made no substantial effort to refute any of the arguments submitted by Wieman. Among these arguments, supported by North Dakota case law, were the following:

A. There was no written agreement between Wieman and Pascoe. Pascoe wishes to apply the parol evidence rule to a contract between itself and a third party or between Wieman and a third party. The parol evidence rule applies only to contracts between the parties involved.

B. There was no specific written contract between Morrison-Knudsen and Pascoe. Pascoe attempted to rely on a series of purchase orders, letters, telephone conversations and other communications, all of which may have constituted a contract, but none of which can be considered to be a written contract standing alone.

C. The agreement which was established by Wieman at the trial was an agreement separate and distinct from any of the written agreements among Wieman, Morrison-Knudsen and Pascoe. In the absence of the specific promise of timely delivery from Pascoe to Wieman, there would not have been any agreements between Wieman and Morrison-Knudsen and Pascoe and Morrison-Knudsen. Accordingly, this oral agreement between Pascoe and Wieman was separate and distinct and would not have been merged into any of the written documents.

Evidence at the trial clearly showed the existence of the oral agreement for timely delivery between Pascoe

and Wieman. The finding of the District Court was specific in this regard. There was little question under the evidence presented that the requirements of a binding contract in North Dakota have been fully met.

CONCLUSION

In accordance with the foregoing, it is respectively submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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